

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANTHONY CIMATO, JR.,

Plaintiff,

v.

DECISION AND ORDER
16-CV-94-A

STATE FARM FIRE AND
CASUALTY COMPANY,

Defendant.

This homeowner's insurance coverage action is pending on diversity jurisdiction under 28 U.S.C. § 1332 after it was removed from state court pursuant 28 U.S.C. § 1441. Plaintiff Cimato suffered a burst water pipe in his home and filed the action to obtain reimbursement for property damage from defendant State Farm. The case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings.

On June 29, 2020, Magistrate Judge Schroeder filed a Report, Recommendation, and Order (Dkt. No. 69), recommending that defendant State Farm's motion for summary judgment (Dkt. No. 90) pursuant to Fed. R. Civ. P. 56(c) be granted. The Magistrate Judge determined that no trial is necessary to conclude that plaintiff Cimato fraudulently inflated the monetary value of the damage due to the burst pipe, and that plaintiff's conduct breached the terms and conditions of the insurance coverage.

Plaintiff Cimato filed objections to the Report and Recommendation (Dkt. No. 70) and State Farm filed a response (Dkt. No. 71). The Court presumes the parties'

familiarity with the evidentiary record and the legal issues before the Court.

Upon *de novo* review of the objections of plaintiff, the Court finds that, when the objections are assessed in light of all the relevant evidence in admissible form, no genuine issues of material fact exist with respect to plaintiff Cimato's willfully false and fraudulent statements in support of his claim, or with respect to his fraudulent concealment with respect to items of property that he claimed were destroyed and discarded. The Court therefore adopts the Report and Recommendation and grants the motion of defendant State Farm Fire and Casualty Company pursuant to Fed. R. Civ. P. 56(c) for summary judgment for the reasons that are stated in the Report, Recommendation, and Order (Dkt. No. 69).

The Clerk shall enter Judgment for defendant State Farm Fire and Casualty and close the case.

IT IS SO ORDERED.

S/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: September 3, 2020